

By: Ellis

S.B. No. 926

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of residential property managers and providing for mediation and education regarding residential landlord and tenant disputes; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 7, Occupations Code, is amended by adding Chapter 1104 to read as follows:

CHAPTER 1104. RESIDENTIAL PROPERTY MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1104.001. DEFINITIONS. In this chapter:

(1) "Board" means the governing board of the department.

(2) "Department" means the Texas Department of Housing and Community Affairs.

(3) "Executive director" means the executive director of the department.

(4) "Residential property manager" means a person who performs, or supervises another person in the performance of, residential property management services for compensation.

(5) "Residential property management services" means collecting rent and performing other management activities related to the lease of residential rental property.

Sec. 1104.002. EXEMPTIONS FROM REGISTRATION. A person is not required to be registered under this chapter if the person:

1 person, and other factors determined by the department.

2 Sec. 1104.054. DISPUTE RESOLUTION AND EDUCATION REGARDING
3 LANDLORD-TENANT DISPUTES. (a) In this section, "Texas nonprofit
4 corporation" means an organization:

5 (1) described by Section 501(c)(3) of the Internal
6 Revenue Code; and

7 (2) organized as a nonprofit corporation under the
8 Texas Non-Profit Corporation Act (Article 1396-1.01 et seq.,
9 Vernon's Texas Civil Statutes).

10 (b) The department shall contract with at least one Texas
11 nonprofit corporation for each county with a population of 500,000
12 or more, and in any other appropriate location as determined by the
13 department, to:

14 (1) mediate landlord-tenant disputes in that county or
15 location related to property management services regulated under
16 this chapter; and

17 (2) educate landlords and tenants of their rights and
18 responsibilities in that county or location related to property
19 management services regulated under this chapter.

20 [Sections 1104.055-1104.100 reserved for expansion]

21 SUBCHAPTER C. PROPERTY MANAGEMENT ADVISORY COUNCIL

22 Sec. 1104.101. DEFINITION. In this subchapter, "council"
23 means the Property Management Advisory Council.

24 Sec. 1104.102. COUNCIL MEMBERSHIP. (a) The council is
25 composed of six members appointed by the executive director, with
26 the board's approval.

27 (b) The executive director shall appoint at least two

1 members who are residential tenants in this state.

2 (c) Each member who is not a residential tenant must:

3 (1) be registered under this chapter; or

4 (2) be a member of a nonprofit organization or
5 voluntary trade association whose membership consists primarily of
6 persons who perform residential property management services in
7 this state or assist residential tenants in this state.

8 Sec. 1104.103. MEMBERSHIP RESTRICTIONS. A person is not
9 eligible for appointment as a council member if the person is
10 required to register as a lobbyist under Chapter 305, Government
11 Code.

12 Sec. 1104.104. TERMS. Members of the council serve
13 staggered three-year terms, with the terms of two members expiring
14 on February 1 of each year.

15 Sec. 1104.105. VACANCY. A council vacancy is filled in the
16 same manner as the original appointment. A person appointed to fill
17 a vacancy is appointed to serve the unexpired portion of the term.

18 Sec. 1104.106. PRESIDING OFFICER. The executive director,
19 with the board's approval, shall appoint a council member to serve
20 as presiding officer of the council for a two-year term.

21 Sec. 1104.107. MEETINGS. The council shall meet at least
22 once every six months at the call of the presiding officer or at the
23 call of a majority of council members.

24 Sec. 1104.108. VOTE REQUIRED FOR ACTION. A council
25 decision requires the affirmative vote of at least four members.

26 Sec. 1104.109. COMPENSATION; REIMBURSEMENT. (a) A council
27 member may not receive compensation for serving on the council.

1 (b) A council member is entitled to reimbursement for actual
2 and necessary expenses incurred in performing functions as a
3 council member, subject to any applicable limitation on
4 reimbursement provided by the General Appropriations Act.

5 Sec. 1104.110. COUNCIL ADVISORY POWERS. The council shall:

6 (1) recommend to the department for adoption standards
7 of practice, conduct, and ethics for registration holders under
8 this chapter;

9 (2) recommend to the department amounts for the fees
10 set under this chapter;

11 (3) assist and advise the department in recognizing
12 continuing education programs and educational courses for
13 registration holders under this chapter; and

14 (4) advise the department in establishing educational
15 requirements for initial applicants for registration under this
16 chapter.

17 [Sections 1104.111-1104.150 reserved for expansion]

18 SUBCHAPTER D. REGISTRATION REQUIREMENTS

19 Sec. 1104.151. REGISTRATION REQUIRED. (a) A person may not
20 perform residential property management services for compensation
21 unless the person holds a certificate of registration issued under
22 this chapter.

23 (b) A person may not represent that a person is a
24 residential property manager or an assistant residential property
25 manager unless the person holds a certificate of registration under
26 this chapter.

27 Sec. 1104.152. VOLUNTARY REGISTRATION. (a) A person who is

1 not required to hold a certificate of registration under this
2 chapter may register if the person satisfies the registration
3 requirements of this chapter.

4 (b) A person exempt from the registration requirements of
5 this chapter who elects to register is subject to the requirements
6 of this chapter to the same extent as any other registration holder.

7 Sec. 1104.153. REGISTRATION APPLICATION; FEES. (a) An
8 applicant for registration must file an application with the
9 department on a form prescribed by the department.

10 (b) The application must be accompanied by:

11 (1) a nonrefundable application fee in an amount set
12 by the department; and

13 (2) the registration fee.

14 (c) The department shall refund the registration fee if the
15 executive director does not approve the application.

16 Sec. 1104.154. GENERAL ELIGIBILITY FOR REGISTRATION.
17 Except as provided by Section 1104.155, to be eligible for
18 registration, an applicant must:

19 (1) be at least 18 years of age;

20 (2) hold a high school diploma or its equivalent;

21 (3) pay the required fees; and

22 (4) meet any additional qualifications required by
23 this chapter or by the department.

24 Sec. 1104.155. REAL ESTATE BROKERS AND APPRAISERS; ISSUANCE
25 OF CERTIFICATE. (a) The department shall issue a certificate of
26 registration to an applicant who provides satisfactory proof to the
27 department that the person holds:

1 (1) an active real estate broker license or an active
2 real estate salesperson license under Chapter 1101; or

3 (2) an active real estate appraiser license or
4 certificate under Chapter 1103.

5 (b) Section 1104.154 does not apply to an applicant under
6 this section.

7 Sec. 1104.156. ELIGIBILITY TO REGISTER AS RESIDENTIAL
8 PROPERTY MANAGER. (a) In addition to satisfying the requirements
9 of Section 1104.154 or 1104.155, an applicant for registration
10 must:

11 (1) complete at least 15 classroom hours of
12 educational courses approved by the department, including at least
13 four hours of instruction on laws and other legal issues in this
14 state related to residential property management services; or

15 (2) submit to the department, if the person is
16 eligible for registration under Section 1104.155, proof
17 satisfactory to the department that the applicant has completed at
18 least four classroom hours of educational programs or courses on
19 the laws and other legal issues in this state related to residential
20 property management services.

21 (b) The department may give appropriate credit to an initial
22 applicant for educational courses on principles of law related to
23 residential tenancies completed by the applicant not more than two
24 years before the date of application.

25 Sec. 1104.157. ISSUANCE OF CERTIFICATE OF REGISTRATION.
26 Not later than the 31st day after the date the department receives
27 an application for registration, the department shall issue the

1 certificate of registration or deny the application.

2 [Sections 1104.158-1104.200 reserved for expansion]

3 SUBCHAPTER E. RENEWAL OF CERTIFICATE OF REGISTRATION

4 Sec. 1104.201. TERM OF CERTIFICATE OF REGISTRATION. Except
5 as otherwise provided by the department, a certificate of
6 registration expires on the second anniversary of the date of
7 issuance or renewal.

8 Sec. 1104.202. RENEWAL. The department shall renew the
9 certificate of registration of an eligible registration
10 certificate holder on the timely receipt of the required renewal
11 fee.

12 Sec. 1104.203. REQUIRED CONTINUING EDUCATION. The
13 department by rule shall require that to renew a registration, the
14 registration certificate holder must complete at least 15 classroom
15 hours of continuing education courses during the term of the
16 registration, at least six hours of which must include instruction
17 on laws and other legal issues in this state related to residential
18 leases and property management services.

19 Sec. 1104.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND
20 COURSES. (a) The department by rule shall recognize appropriate
21 continuing education programs for registration certificate holders
22 that satisfy the requirements of Section 1104.203.

23 (b) The department shall recognize a continuing education
24 course, including a course on the laws and other legal issues
25 related to residential tenancies, that is:

26 (1) approved by the Texas Real Estate Commission or
27 the Texas Appraiser Licensing and Certification Board; and

1 (2) completed by a registration certificate holder who
2 also holds a real estate broker license or real estate salesperson
3 license under Chapter 1101.

4 (c) The department may recognize an educational program or
5 course:

6 (1) related to residential tenancies; and

7 (2) offered or sponsored by a public provider or a
8 recognized private provider, including:

9 (A) the comptroller;

10 (B) the State Bar of Texas;

11 (C) the Texas Real Estate Commission;

12 (D) an institution of higher education that meets
13 program and accreditation standards comparable to those for public
14 institutions of higher education as determined by the Texas Higher
15 Education Coordinating Board; or

16 (E) a nonprofit and voluntary trade association,
17 institute, or organization:

18 (i) whose membership consists primarily of
19 persons who are residential property managers; and

20 (ii) that subscribes to a code of
21 professional conduct or ethics.

22 (d) The department may recognize a private provider of an
23 educational program or course if the provider:

24 (1) applies to the department on a form prescribed by
25 the department; and

26 (2) pays in the amounts set by the department:

27 (A) a nonrefundable application fee; and

1 (B) an educational provider's fee.

2 (e) The department shall refund the educational provider's
3 fee if the department does not recognize the provider's educational
4 program or course.

5 [Sections 1104.205–1104.250 reserved for expansion]

6 SUBCHAPTER F. ADMINISTRATIVE PENALTY

7 Sec. 1104.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
8 board may impose an administrative penalty on a person who
9 violates:

10 (1) this chapter; or

11 (2) a rule adopted or order issued by the board or
12 department.

13 Sec. 1104.252. AMOUNT OF PENALTY. (a) The administrative
14 penalty shall be assessed by the board in an amount that may not
15 exceed \$5,000. Each day a violation continues or occurs is a
16 separate violation for purposes of imposing a penalty.

17 (b) The amount of the penalty shall be based on:

18 (1) the seriousness of the violation;

19 (2) the respondent's history of previous violations;

20 (3) the amount necessary to deter a future violation;

21 (4) efforts made by the respondent to correct the
22 violation; and

23 (5) any other matter that justice may require.

24 (c) The board shall by rule or by procedure published in the
25 Texas Register establish a written enforcement plan that provides
26 notice to registration certificate holders of the specific range of
27 penalties that apply to specific alleged violations and the

1 criteria by which the department determines the amount of a
2 proposed administrative penalty.

3 Sec. 1104.253. NOTICE OF VIOLATION AND PENALTY. If, after
4 investigation of a possible violation and the facts surrounding the
5 possible violation, the executive director determines that a
6 violation occurred, the executive director shall issue to the
7 respondent a notice of alleged violation. The notice must:

8 (1) include a brief summary of the alleged violation;

9 (2) state the amount of the recommended administrative
10 penalty; and

11 (3) inform the respondent that the respondent has the
12 right to a hearing on the occurrence of the alleged violation, the
13 amount of the penalty, or both.

14 Sec. 1104.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
15 Not later than the 20th day after the date the respondent receives
16 the notice under Section 1104.253, the respondent may:

17 (1) accept the executive director's determination and
18 recommended administrative penalty; or

19 (2) make a written request for a hearing on that
20 determination.

21 (b) If the respondent accepts the determination, the board
22 by order shall approve the determination and require the respondent
23 to pay the recommended penalty.

24 Sec. 1104.255. HEARING ON RECOMMENDATIONS. (a) If the
25 respondent requests a hearing, the hearing shall be conducted by
26 the State Office of Administrative Hearings.

27 (b) The State Office of Administrative Hearings shall

1 consider the department's applicable substantive rules and
2 policies when conducting a hearing under this subchapter.

3 (c) An administrative law judge at the State Office of
4 Administrative Hearings shall:

5 (1) make findings of fact and conclusions of law; and

6 (2) promptly issue to the board a proposal for
7 decision as to the occurrence of the violation and the amount of any
8 proposed administrative penalty.

9 Sec. 1104.256. DECISION BY BOARD; NOTICE OF ORDER. (a)
10 Based on the findings of fact, conclusions of law, and proposal for
11 decision, the board by order may determine that:

12 (1) a violation occurred and impose an administrative
13 penalty; or

14 (2) a violation did not occur.

15 (b) The executive director shall give notice of the order to
16 the respondent.

17 (c) The order must:

18 (1) include separate statements of the findings of
19 fact and conclusions of law;

20 (2) state the amount of any penalty imposed;

21 (3) inform the respondent of the respondent's right to
22 judicial review of the order; and

23 (4) include any other information required by law.

24 Sec. 1104.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
25 (a) Not later than the 30th day after the date the board's order
26 becomes final, the respondent shall:

27 (1) pay the administrative penalty; or

1 (2) file a petition for judicial review contesting the
2 fact of the violation, the amount of the penalty, or both.

3 (b) Within the 30-day period, a respondent who acts under
4 Subsection (a)(2) may stay enforcement of the penalty by:

5 (1) paying the penalty to the department for placement
6 in an escrow account;

7 (2) giving the department a supersedeas bond in a form
8 approved by the executive director that:

9 (A) is for the amount of the penalty; and

10 (B) is effective until judicial review of the
11 order is final; or

12 (3) filing with the department a sworn statement that
13 the respondent is financially unable to pay the penalty and is
14 financially unable to give the supersedeas bond.

15 Sec. 1104.258. COLLECTION OF PENALTY. If the person on whom
16 the administrative penalty is imposed fails to pay the penalty and
17 enforcement of the penalty is not stayed, the department or the
18 attorney general may bring an action to collect the penalty.

19 Sec. 1104.259. REMITTANCE OF PENALTY AND INTEREST. (a) If,
20 after judicial review, the administrative penalty is reduced or not
21 imposed, the executive director shall:

22 (1) remit to the respondent the appropriate amount,
23 plus accrued interest, if the respondent paid the penalty; or

24 (2) execute a release of the bond, if the person gave a
25 supersedeas bond.

26 (b) Interest accrues under Subsection (a)(1) at the rate
27 charged on loans to depository institutions by the New York Federal

1 Reserve Bank. The interest shall be paid for the period beginning
2 on the date the penalty is paid and ending on the date the penalty is
3 remitted.

4 [Sections 1104.260-1104.300 reserved for expansion]

5 SUBCHAPTER G. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

6 Sec. 1104.301. DISCIPLINARY POWERS OF BOARD. After a
7 hearing, the board may refuse to issue or renew a certificate of
8 registration, impose an administrative sanction, seek injunctive
9 relief, or seek a civil penalty under this chapter against a
10 registration holder for:

11 (1) a violation of this chapter or a rule adopted under
12 this chapter;

13 (2) gross incompetence in the performance of
14 residential property management services;

15 (3) dishonesty or fraud committed while performing
16 residential property management services; or

17 (4) a violation of the standards of practice, conduct,
18 or ethics adopted by the department.

19 Sec. 1104.302. CIVIL PENALTY. The attorney general or the
20 board may institute an action in a district court in Travis County
21 to collect a civil penalty from a person who violates this chapter
22 or a rule or order of the board or the department under this
23 chapter.

24 Sec. 1104.303. INJUNCTIVE RELIEF. (a) The attorney
25 general or the board may institute an action in a district court in
26 Travis County for injunctive relief to restrain a violation by a
27 person who appears to be in violation of or threatening to violate

1 this chapter or a rule or order of the board or the department under
2 this chapter.

3 (b) The attorney general and the board may recover
4 reasonable expenses incurred in obtaining injunctive relief under
5 this section, including court costs, reasonable attorney's fees,
6 investigative costs, witness fees, and deposition expenses.

7 Sec. 1104.304. ADMINISTRATIVE SANCTIONS. (a) The board
8 shall revoke, suspend, or refuse to renew a registration or shall
9 reprimand a registration certificate holder for a violation of a
10 ground listed under Section 1104.301.

11 (b) The board may place on probation a person whose
12 registration is suspended. If a registration suspension is
13 probated, the board may require the person to:

14 (1) report regularly to the department on matters that
15 are the basis of the probation;

16 (2) limit practice to the areas prescribed by the
17 board; or

18 (3) continue or renew professional education until the
19 person attains a degree of skill satisfactory to the board in those
20 areas that are the basis for the probation.

21 Sec. 1104.305. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE.

22 (a) A respondent is entitled to a hearing conducted by the State
23 Office of Administrative Hearings if the board proposes to deny,
24 suspend, or revoke a registration.

25 (b) A proceeding under this chapter to deny, suspend, or
26 revoke a registration is considered to be a contested case under
27 Chapter 2001, Government Code.

1 Sec. 1104.306. CRIMINAL PENALTIES. (a) A person required
2 to register under this chapter commits an offense if the person:

3 (1) is not registered under this chapter; and
4 (2) performs residential property management services
5 for compensation.

6 (b) A person commits an offense if the person:

7 (1) knows that a person required to register under
8 this chapter is not registered; and

9 (2) represents that the person required to register is
10 a residential property manager or assistant residential property
11 manager.

12 (c) An offense under this section is a Class B misdemeanor.

13 SECTION 2. (a) Not later than January 1, 2006, the Texas
14 Department of Housing and Community Affairs shall prescribe fees
15 and forms, adopt rules, appoint the Property Management Advisory
16 Council, and take any other action required by Chapter 1104,
17 Occupations Code, as added by this Act.

18 (b) The initial Property Management Advisory Council
19 members appointed under Section 1104.102(c)(1), Occupations Code,
20 as added by this Act, are not required to be registered under
21 Chapter 1104, Occupations Code, as added by this Act, but are
22 required to be eligible for registration under that chapter.

23 SECTION 3. Sections 1104.151, 1104.152, and Subchapters F
24 and G, Chapter 1104, Occupations Code, as added by this Act, take
25 effect July 1, 2006.

26 SECTION 4. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2005.